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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,306	04/30/2008	Chi Vu	B2047-7035US	6388

76776 7590 10/29/2010

LANDO & ANASTASI, LLP  
B2047  
ONE MAIN STREET  
SUITE 1100  
CAMBRIDGE, MA 02142

EXAMINER
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MOORE, SUSANNA

ART UNIT	PAPER NUMBER
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1624

NOTIFICATION DATE	DELIVERY MODE
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10/29/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DOCKETING@LALaw.COM  
GENGELSON@LALaw.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,306	<b>Applicant(s)</b> VU ET AL.	
	<b>Examiner</b> SUSANNA MOORE	<b>Art Unit</b> 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17, 19-25, 27-34 and 47-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17, 19-25, 27-34 and 47-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***The instant application is being examined by a different examiner.***

***Response to Amendment***

Applicant's arguments, see Remarks, filed 7/30/2010, with respect to Office Action mailed 4/30/2010 have been fully considered. Some of the rejections have been withdrawn, others have been maintained, and some are new rejections or are new as a result of Applicant's amendments. Thus, this is a Nonfinal Office Action. In summary, claims 1-5, 7-17, 19-25, 27-34 and 47-54 are currently pending and under consideration.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-9, 19-21, 27-34, 51, 52 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7-9, 19-21, 27-34, 51, 52 and 53, the term "heteroaryl" in the definition of R<sup>1</sup> lacks antecedent basis. Claims 7, 9, 19-21, 27, 29, 30-32, 51 and 53 have said term or a substituent which is embraced by said term.

Regarding claims 8, 9, 19-21, 28-32, 52 and 53 recite R<sup>1</sup> as being "optionally substituted" or substituted which lacks antecedent basis. The Specification provides a list of substituents spanning pages 10-14 for each group. However, open-ended language is used, e.g. "such as," see page 10, line 16. Is this the whole list for "alkyl" which is found on page 10 or does Applicant

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intend more? Moreover, the list does not allow alkyl, which is defined for R<sup>1</sup>, to be substituted with an aryl, see claims 8 and 9. Thus, said claims are vague.

Claims 1-5, 7-17, 19-25, 27-29, 33, 34 and 47-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “acyl” is vague. The reason is that there are multiple definitions, and there is no one, generally accepted, definition. The broadest notion sets no limitation at all on the nature of the acid used to form the acyl. Thus, the Wikipedia entry says “the term acyl or acyl group refers to a functional group obtained from an acid by removal of a hydroxyl group.” If you take OH from nitric acid, you have nitro group, so nitro is an acyl. If you take OH off of hypochlorous acid (Cl-OH), you get Cl as acyl. Hydrogen peroxide is a (very) weak acid, so take away OH, and you have OH left as an acyl. What does Applicant intend? For whichever choice is made, Applicants must show that one of ordinary skill in the art would have been able to determine that this choice, and not some other, was intended.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSANNA MOORE whose telephone number is (571)272-9046. The examiner can normally be reached on M-F 8:00-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna Moore/  
Examiner, Art Unit 1624